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catchment area, rainfall and other things. These districts cannot be compared with the other districts in the Presidency and any general remarks would not apply to them.

"As one hon. Member said, if the Tungabhadra scheme comes to completion, it will solve our difficulty and we shall be able to have an unfailing supply of water which under the present conditions we cannot possibly have. Hon. Members unacquainted with these districts may not be able to realize these difficulties. I may point out that the Government in the course of three years will be spending something like 50 lakhs of rupees in repairing the existing sources of irrigation. I understand from the Board of Revenue that the allotment for this year comes to Rs. 14 lakhs; to Anantapur alone they have allotted not less than Rs. 75,000. That is in addition to any money spent during the famine operations. When the Collector attempted to carry out some of these minor irrigation works in Anantapur from the special grant he could not get labour which probably will be forthcoming when agricultural operations have ceased. The difficulties in these areas are not difficulties which we generally meet in other parts of the Presidency, and the Government do all they possibly can with the material at hand to put through such measures as are feasible and not likely to be a failure. I hope, Sir, with these remarks of mine I have answered those criticisms which hon. Members have put forward and that this grant will be passed."

* Mr. K. A. NACHIYAPPA GOUNDER:—"I beg leave to withdraw my motion."

The cut motion was, by leave, withdrawn.

The demand was put and carried and the grant was made.

The House then adjourned for lunch.

After Lunch (2-30 p.m.)

VIII.—A BILL FOR THE IMPOSITION AND LEVY OF LICENCE FEES ON THE SALE OF TOBACCO IN THE PRESIDENCY OF MADRAS (BILL No. 17 OF 1935).

* The Hon. Mr. C. A. SOUTER:—"Sir, I beg leave to introduce a Bill^a for the imposition and levy of licence fees on the sale of tobacco in the Presidency of Madras (Bill No. 17 of 1935).

"Hon. Members will, I think, sympathize with me when I confess to a feeling of some diffidence in introducing a measure of taxation at a time when the general cry is for reduction of taxation; but I think this Honourable House, after hearing what I have to say, may perhaps think that my diffidence was misplaced (laughter) and that I have considerable justification in introducing this Bill, as I now do.

"In the Statement of Objects and Reasons attached to the Bill you have been given succinctly the Government's reasons for bringing

^a Published in the *Fort St. George Gazette*, dated 8th October 1935.

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forward this measure. What I now propose to do is to expand those objects and reasons and to give you at some length, I am afraid, the reasons of the Government for introducing this measure. I understand my Hon. Colleague, the Finance Member, will in the course of the debate, explain to you the general financial situation of this Presidency. I do not therefore propose to go into the general aspect of that question, but to confine myself to the one or two items with which my department is particularly concerned and which between them bring in a large proportion of the revenues of this Presidency. I refer of course to the Excise Department and to the Revenue Department. As far as the Excise Department is concerned, although I have no personal part in its administration, yet, the Revenue Department is the collecting department for it and that is directly under my charge.

"New, Sir, it must be obvious to anyone who has studied the revenues of this Province for the last four or five years that these two departments, which, as I have said, bring in between them something like 80 to 85 per cent of our total revenues, have ceased to be expanding departments. In other words, if the functions of Government which are expanding have to go on you cannot rely on either of these two departments to bring any revenues which will meet the growing needs of this Presidency in general. Indeed it is more than possible, it is even probable, that the revenues from these two departments, instead of expanding, will decrease. It is just possible, so far as the Excise Department goes, that if there is a wave of prosperity in the country we may get back the maximum revenue which we have got from that department in the past. But, so far as one can see, that time is very far distant. As regards the Revenue Department, on the contrary, the whole trend of thought now seems to be that that department has reached the limit of its expansion; in fact, in many quarters there is an insistent demand that the revenue from it should be reduced. This has been particularly noticeable this year and in the previous year. We all hope, of course, that the reason which actuated the demand for the reduction in land revenue will be only temporary, but we cannot possibly rely upon it and I think it is an undoubted fact that before we can get back to the position of the Revenue Department, say five years ago, prices will have to increase very considerably over what they are now. There are signs, definite and promising, that the prices of agricultural produce are on the increase, but, as a Government, we cannot possibly rely on that fact as showing that this increase will go on and that we can confidently rely on our present source of income from land revenue to the same extent as we have done in the past.

"As the House is aware, in consequence of this demand for a decrease in land revenue, the Government have for the last three or four years, granted lump sum reductions on the assessments which have varied between 50 to 65 lakhs. Now, this, you will admit, is a

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very considerable cut in our revenues and, if Government is to function as a civilized Government and to expand its operations, I think it is pretty clear that this loss must be made good in some way or another.

“Again, in the Revenue department, we have always relied, as the House is aware, on periodic increases in our revenues from our re-settlements. Now, this re-settlement in the last year or years, has been attacked furiously in all parts of the presidency. I think, speaking generally, there was some justification (Mr. P. V. Krishnayya Choudari: ‘Hear, hear’) for it owing to, what I hope is, a temporary cause. But, as I said before, we cannot rely upon this temporary cause disappearing and ourselves getting back to the position where we were from which any increase of revenue from re-settlements will be feasible. In the circumstances the Reserved Half of the Government are put to this task. I do not, as Revenue Member, for one moment admit that the general principles on which we fixed our re-settlements are essentially wrong. On the contrary, speaking for myself, I think that those principles are intrinsically sound. But I can quite see that if we are going to follow those principles strictly and insist that in the present or future re-settlements we should take our full pound of flesh we should have a very unpopular Government, and there might be some justification for saying that we are not acting fairly in the present circumstances. Therefore we have decided that, so far as re-settlements go, we shall follow the principles which we have been following. If an increase on those principles is justified, we shall impose that increase periodically, but we shall not collect such increase until such time as the Government thinks that the circumstances warrant it. (Mr. P. V. Krishnayya Choudari: ‘Hear, hear.’)

“That seems to me on many grounds to be the safest course to pursue. In the first place we do not altogether cut off a possible source of revenue. And secondly I think, so far as the Reserved Half of the Government goes, we should be doing a very great injustice to our successors if by an act of ours we should prevent them at any future time from collecting a revenue which circumstances warrant their collecting. I think we should be highly unfair to the new Government if we adopted any other course. We propose therefore to adopt such a course as will not disturb the present conditions but will enable the future Government if they should think fit to impose such extra assessment as may become necessary. Well, Sir, considering these factors we have had to look round for possible sources of extra revenue. It has been suggested that we should scrap altogether our present system of land revenue and should put in its place some taxation on agricultural income. That proposal has certain attractions, but I think that if you consider the matter closely you will probably come to the conclusion that the sum total that you can get from agricultural income will not materially vary the income that you now

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get from land revenue, and that it would be merely shifting the incidence of taxation from one shoulder to another. If we do that I very much doubt whether the result would be a material increase in the revenues of this Presidency. Is it worth while scraping a time-honoured system which has been understood by everybody? That is a matter which I should like the House to consider.

"Then, Sir, there is another possible source of income which ought to appeal to district boards and municipalities. I refer to the re-imposition of tolls. Now, here again we have, I know, conflicting opinions, very conflicting opinions. I myself am rather of the view that if I take each Member of this Hon. House separately into my room and ask him whether he thought that the toll might be re-imposed I should have 75 to 80 per cent of the Members say 'yes.' But if I came down here to the Legislative Council and put this proposal forward, I very much doubt whether 80 or 85 per cent would say 'yes.' That is the situation. So far as I can see at present, the re-imposition of tolls is not a workable proposition. I do not think such a proposal would be carried by this House.

"Then, Sir, with regard to the Bill which I have brought forward, I think I am right in saying that except India there are very few civilized countries in the world which allow the free sale of tobacco. Practically in every country in the world which is consuming tobacco, a sort of levy is made on the sale of tobacco. In France it is so. In England there is the licensing system as is proposed in this Bill. In India itself as the House is probably aware, in Bombay and Bengal Presidencies they have introduced certain acts. In Bombay the Act has been working for the last two years. There they have not only an Act applicable generally to the whole Presidency, but they have also a separate Act applicable to the city of Bombay itself. In Bengal, we have an act applicable, I understand, to the whole Presidency. Anyhow, I look upon it as a mere matter of precedent, if precedent for the introduction of such a Bill as this is wanted.

"Now when Government came to the conclusion that a tax on tobacco was a fair one, they had of course to devise measures for carrying this proposal out. Our first idea was we could do so by a system of monopoly. I need not go into details to explain this system to the House as it is by no means new to this Presidency. In the case of abkari revenue we had the old system of monopoly which gave way for our present system. So the system of monopoly by itself is not in any way new, and is quite well understood in this Presidency. But the difficulty is it is not possible for us to know exactly how many tobacco shops there are in the whole Presidency—because it is a very difficult matter and there are no statistics available now—and what is more important from our point of view is that there will be considerable opposition to such a course. But we do not want to cut out the possibility of monopoly altogether and therefore we came to the conclusion that we should introduce the system which is embodied in the

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Bill, viz., the fixed fee system with the proviso that if the future Government should think it possible to introduce the system of monopoly they should have power under the Act to do so. And the intention of the Government is, if this Hon. House should pass this Bill, to introduce the fixed fee system of licensing the sale of tobacco. I will not go into details of the Bill. If permission is granted to introduce the Bill, subsequently in the Select Committee all points of detail can be thrashed out. But our idea is to license every one who sells tobacco. Our estimate of the revenue for the current year by the imposition of this licence fee is only 10 lakhs. It is difficult to know the number of shops in the Presidency. They must run into thousands. The House will, I am sure, understand that if we anticipate a revenue of only 10 lakhs from these thousands and tens of thousand shops, the licensing fee will only be very small. I think that this course is justified in that we are introducing a new form of taxation and therefore we should impose a burden which will not be felt and which will make the tax not unpopular. At the same time I think the House will understand that the increase in our general revenues will only be 10 lakhs, but everybody will realize and I think it is more than probable that in the course of years the sum which we may get from this taxation will increase considerably over 10 lakhs.

“As I have already said, the policy that applied with regard to our land revenue also applies here. We do not want to bind in any way the future Government of the Province from being in the position to increase its revenues should circumstances warrant. That is our general position. We are maintaining that position in our present Bill. Hon. Members, I think, have received statements of the revenues which we anticipate this year. I do not wish to say much on this point as my Hon. Colleague, the Finance Member, I have no doubt, will give a full statement on this subject. But it will be noticed that our revenues are not coming in as we anticipated. The consequence is of course that in the coming year we shall have little to spend on new schemes and unless we do get a certain source of revenue on which we can rely, I cannot see any possibility in future of large developments in what is commonly called nation-building departments, and that seems to me one of the essential reasons why we should try by all means in our power without inflicting any undue hardship on any particular caste or community to increase our revenues.

“One word more and I am done. It is this: Government are 3 p.m. solicitous that these taxes shall not in any way affect the grower. We do not want taxation which will result in increasing the burden of the ryots of this Presidency, and we think that this tax which is merely imposed on the sale of tobacco will fall either on the shopkeeper who at present bears very little of the burden of our revenues or on the consumer, who will suffer very little indeed from the imposition of this small tax. Indeed I go so far as to say this that probably the

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result might be that where now you went into a shop and bought 12 beedies for a pice you might get 10. I do not think it will be anything more serious than that. But essentially the measure must be devised so as to protect the grower and if it is not so devised it must be revised in the Select Committee to that effect. We must see to it that the actual ryot is not made to suffer by the introduction of this extra taxation. With these remarks I beg to introduce this Bill and move that it be referred to a Select Committee. In doing so, Sir, under Standing Order 39 (2) I move for leave to fix the number of Members of the Select Committee at 17 consisting of the following names:—

The Hon. the Raja of Bobbili.

Sir William Wright.

Diwan Bahadur T. A. Ramalingam Chettiyar.

Mr. P. Peddiraju.

Mr. K. P. Raman Menon.

Mr. P. V. Krishnayya Choudari.

Mr. C. Ramalinga Reddi.

B. Pocker Sahib Bahadur.

Rao Sahib N. Siva Raj.

Mahboob Ali Baig Sahib Bahadur.

Mr. Daniel Thomas.

Mr. M. S. Sreshta.

Mr. H. R. Uzielli.

Mr. A. Harischandrudu.

Mr. V. T. Arasu.

The Raja of Khallikote.

The Mover.

* The Hon. Mr. G. T. H. BRACKEN:—"Mr. President, Sir, in rising to second the motion of my Hon. Colleague, the Revenue Member, I think it might be helpful to this House if I, to some extent, anticipated the Budget statement ordinarily to be made next February and took the House into the confidence of the Government as to the present rather serious financial situation. With this object I have already circulated a statement^a of the probable revenue for the whole year based on the actuals of the first six months. At the time the statement was prepared, I was not sure that I could have the actuals of expenditure also. But I have those figures now ready. I propose first of all, to deal with the revenue and expenditure so far as can be estimated on the actuals of the first six months. The figures of revenue

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are already before the House. As regards expenditure, expenditure in the first six months has been in proportion to our expectations. This House voted an additional amount for expenditure in the budget of this year and so, as might be expected, the expenditure for the first six months of the year is higher by some Rs. 15 lakhs than the expenditure before. With falling revenue and expenditure on a higher level, the net result must, I fear, inevitably be a deficit at the end of the current year. That seems to be inevitable. What exactly the deficit will be it is perhaps premature to forecast at the present moment. I think that the deficit might quite well be as much as Rs. 20 lakhs and might even be higher. So much for the current year.

"In connexion with the financial enquiry which is shortly to be conducted by Sir Otto Niemeyer, a financial forecast of the next five years has been worked out and on the basis of the recent figures, I am afraid that that forecast is not very promising. We have attempted forecasts in previous years, but they have all proved to be too optimistic, as indeed the budget statement of the current year has proved to be over-optimistic: the actuals have proved to be much worse than originally anticipated.

"The Hon. the Revenue Member has explained the position in regard to land revenue. In fact we cannot anticipate any considerable increase in land revenue in the next five years. Indeed it is possible that members of the next Provincial Assembly may wish to reduce land revenue even further. (Hear, hear.) One possible expanding source of revenue is the Cauvery-Mettur Project. As the project develops and more land comes under wet cultivation, it may be hoped that more revenue will come in. That again is rather problematic, for the new Provincial Assembly may wish to reduce the rates in the Cauvery-Mettur Project. (Mr. T. S. Ramaswami Ayyar: Even the present Council.) Under Mettur I do not think it will be wise to anticipate any considerable increase in the next five years. Stamps again have been doing badly. It would be unwise to expect anything much from stamps. The same applies to forests and registration. One source of revenue we have, which is an expanding source of revenue and that is Hydro-Electric Schemes. That is doing better than we hoped and we may hope to get an expanding revenue from this source. But the amount will not be considerable in any one year. The net result is, I am afraid, speaking generally, we have no real expanding source of revenue at all.

"On the expenditure side there are certain inevitable additions to expenditure which cannot be avoided as for example pension charges which must increase year to year. There are also the extra expenses connected with the introduction of the Reforms and that extra expenditure will continue as a result of the introduction of the new constitution. Thus there is a certain amount of inevitable new expenditure every year even on the present basis without attempting any new lines of what is known as nation-building.

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"I am afraid this picture is somewhat a gloomy one, but the facts have to be faced. Apart from the deficit this year on the basis of the figures before us, there will be no money available next year except for standing commitments. This means that grants that have been given almost every year for educational, medical and industrial institutions for building and equipment, grants for the betterment of depressed classes, grants to local bodies for water-supply and drainage schemes, roads and bridges, village water-supply and communications, grants for all these desirable objects for which a provision of about Rs. 20 lakhs, used to be made every year—I may say a very modest provision—cannot be made in the next financial year. I am afraid the same thing will be the case in the following years also. Our financial forecast on the basis of the figures I have mentioned shows a continued deficit in each of the next five years, that is to say, unless we explored some new sources of revenue. That, Sir, is the justification of the introduction of this Bill. Nobody likes new taxation, least of all Government, and I can assure this House that Government would not have thought of this new source of revenue under the Tobacco Bill and the betting taxes unless they were convinced that it was in the interests of the Presidency both in the immediate future, that is, the next financial year and for the future Government of this Presidency to have one or two expanding sources of revenue. I am afraid the position roughly is this: if we do not have these expanding sources of revenue it may be necessary to cut down the land revenue concessions that have been granted in recent years to get a balanced budget and that is a very serious situation. I put it to the House whether it would not be better to impose what after all are luxury taxes on tobacco and betting rather than re-impose the burden of land revenue on the ryot. Tobacco is after all a luxury. I suppose those of us who smoke—I am one of them—would probably be very much better off in pocket and in health if we do not smoke at all. The same is the case with smokers, or chewers or sunff-takers in the Presidency. Such a tax does not impose any hardship on the population as a whole. The same applies, even more so, to the betting tax. There I suppose every one will be better off in pocket at any rate if they do not bet. I have taken the House into the confidence of the Government fully and entirely honestly and shown them what the position is and what is the justification for the imposition of this tax. It may perhaps be considered as the lesser of the two evils, the tobacco tax as against the removal of the land revenue concessions. But I do not want to harp on that point. I think this tax is justifiable on its merits, not only from the point of view of the benefit of the immediate future but also of the benefit of the future Government. I think there is the duty of the House to see that the new Government whatever it may be, starts on its career with a balanced budget and a fair prospect of some expansion of revenue to meet new demands for nation-building. On this ground, I would ask the House to consider the thing on its merits. Imposition of taxation may, in the opinion of some Members of this House, cost them some votes in the election if they vote for it. But

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I would appeal to Members of this House to take a wider view and think of the good to the country as a whole and specially to the new Government—whatever it may be—that will shortly be inaugurated."

* Rao Bahadur Sir A. P. PATRO :—" Mr. President, Sir, with your permission, I shall reserve my general remarks in reply to the Hon. the Revenue Member and the Finance Member who have just now spoken, when I shall be able to meet the remarks made by them. But my immediate purpose is to raise a preliminary objection, to raise a point of order that this Bill is invalid and should not be considered by this House. That is my point of order. In the Statement of Objects and Reasons, which is very clear and concise and which is often referred to by the Hon. the Revenue Member and the Finance Member, it is stated that this is a tax; there is no doubt about it. I wish to draw your attention to the Statement of Objects and Reasons. It is stated: 'No tax is now levied on tobacco in the Madras Presidency.' The Taxation Enquiry Committee in paragraph 193 of their report has observed Then it is stated that 'it is accordingly proposed to raise some revenue from this source to the financial advantage of the Presidency.' These are very important facts stated in the Statement of Objects and Reasons and they show what the real intention of the Government is in bringing forward this Bill. In the clause relating to definitions (15), it is stated that 'tobacco revenue' means revenue derived or derivable from any fee, fine or confiscation imposed or ordered and all sums accruing to Government, under the provisions of this Act. You may call a horse by any name; it is nevertheless a horse. Tobacco revenue cannot be otherwise than what it means to be. It is a tax proposed to raise revenue from this source to the financial advantage of the Presidency. This is the essential and the real object of this Bill. The previous sanction of the Governor-General has been obtained for this Bill. The existing Government of India Act, 1919, gives two schedules with regard to which the previous sanction of the Governor-General is not necessary. Schedule I refers to a tax on land put to uses other than agricultural, a tax on succession, a tax on any form of betting, a tax on advertisements, a tax on amusements, a tax on any specified luxury, a registration fee and a stamp duty. In this list 'tobacco' does not find a place. Section 80-A of the Government of India Act, 1919, states that 'the local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law imposing or authorizing the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under this Act.' We must now consider the position that is created by the Government of India Act, 1935. List 2 of Schedule 7 of this Act relates to provincial subjects, duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India, alcoholic liquors, opium, medicine, etc. Item 45 of List I—Federal subjects—refers to duties of excise on tobacco and

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other goods manufactured or produced in India. Therefore under the new Act this is a federal subject. The Act contemplates a saving clause in regard to provinces where the taxes which are included now for the first time in Schedule I under Federal taxes are being continued in other provinces. I wish to draw your attention to section 143 (2) of the new Act. It states that any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the province, municipality, district or other local area under a law in force on the 1st day of January 1935, may continue to be levied. This Bill has been introduced only recently and not before 1st January 1935. Therefore I say that this House and the Government will not have the right to levy or impose any duty, cess or tax on tobacco. The question of any distinction between a duty, tax or fee does not arise in this case, because it is clearly stated in the Statement of Objects and Reasons that the main object of this Bill is to augment the revenue of the province. The principal aim of imposing excise duty on internal products is to raise revenue, call it a fee or duty or tax. In this connexion I would like to draw your attention to the description of 'excise' under the Devolution Rules of the Government of India Act of 1919. At page 144 of the Legislative Council Manual, Volume I, this is the definition given of 'Excise':

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'Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles. . .'

It is therefore quite clear here as to what is meant by the Government of India Act. It does not mean that excise duties are separate from excise revenue. This Bill seeks to levy a duty on tobacco, and I submit that it is analogous to what is contained in item No. 16 of Part II of Schedule I to the Devolution Rules. This Bill, which is rather very clumsy—apart from its other defects which I will point out in my next turn—says in clause 3:

'Subject to the control and direction of the Local Government, the Commissioner shall superintend the working of this Act and the collection of tobacco revenue in all areas in the Presidency of Madras.'

Again in clause 4, it says:

'Subject to the control and direction of the Local Government and of the Commissioner, Collectors of districts shall be responsible for the collection of tobacco revenue and the carrying out of the provisions of this Act in all areas in their respective districts to which this Act is applied.'

So, the whole aim behind this Bill is not so much the control of licence as we have got in the case of the licence fees levied by the local boards as to augment the revenues of the Provincial Government. It is not intended to cover the charges of supervision or control that may be necessary. Generally a licence fee is levied where a licence is issued under certain conditions, e.g., that certain rules should be observed of sanitation, hygiene, public safety or morality, and where the licence is controlled by the authority issuing the licence, certain charges of

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supervision and control have to be incurred, which are meant to be covered by the licence fee. As I said, the object of this Bill is not to have any such control over the vending of tobacco—such as that the tobacco trade or tobacco leaf has got a deleterious effect on the people. For the matter of that, it is just the other way; it is a necessity otherwise it will not be smoked by so many people. When that is so, this Bill simply creates a sort of monopoly in the trade—all monopolies ought to be discouraged. Well, I do not want to go into the merits of the Bill just at present, but my submission is this: that this Bill contravenes the provisions of the new Government of India Act, and not having been passed into law before 1st January 1935, it is invalid and inoperative.

“ I do not want to go into the legal aspect of the matter—how the High Court would interpret these matters heretofore. I know there are some decisions of Canada and the United States, which I can point out, to show that there is a distinction between ‘ fee ’ and ‘ tax ’; but, as I said, in this case such a distinction does not arise at all, because ostensibly in this case the fee levied is for the purpose of augmenting the revenues. The consequence of this legislation, if it is passed into law, will therefore be that under section 143 (2) it will be invalid. Any court may at any time say that it is invalid. In such a case, what is to be the position of this House? And you, Sir, as the custodian of the rights and privileges of this House, have to decide it. We look up to you to protect our rights and the rights of the public in a matter like this. (Laughter.) It is a very serious matter. However much the Hon. the Revenue Member and the Hon. the Finance Member may try to explain, there is no gainsaying the fact that this Bill taxes the poorer classes and takes away a few pies from their daily wages. That is what it comes to. It is a tax on the general population, and this Council has no power to levy the tax now. The Government have come forward with this Bill without considering the consequences. All rules of procedure relating to this House and all your rulings are intended to prevent the Council from wasting its time in discussing invalid measures and motions. If you, Mr. President, are satisfied with what I submitted, viz., that this duty on tobacco is a federal subject under section 143 (2), not having been enacted before the 1st January 1935, it would not be available to this province. Not having been thought of by this Government all these years, even in times when we had deficit budgets—I can show from the Budget speeches that there was not a single year when the Finance Member gave us a bright view of the financial position of our province, every time it was said that our finances were in a deplorable condition and we were asked to show some indulgence in regard to the Budget—where is the necessity for bringing in this measure now which is invalid according to section 143 (2)? Would you, Sir, as custodian of the rights and privileges of this House, allow this invalid law to be passed? To-morrow, next year or in 1937, if Part III were brought into operation, what would be the position? Can you maintain this tax? You

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cannot. I therefore ask hon. Members to consider the whole position. I leave the matter, Sir, in your hands, and I submit, that this Bill cannot be considered by this House."

* The Hon. Sir K. V. REDDI NAYUDU:—" Mr. President, Sir, I am afraid that my hon. Friend—I have the greatest respect for him—is under a misapprehension and a misconception. The contention of my hon. Friend is two fold. In the first portion of his speech, and in fact, in the concluding portion also, he told us that this Bill is *ultra vires* of this Council and that we have no right to pass it into an Act, by virtue of section 143 (2) of the new Government of India Act. That is one misconception. The second misconception is this: that even assuming for a moment that we can pass this law, still it can be effective only till Provincial autonomy comes into operation, that is as soon as Part III of the new Act comes into force, automatically the proposed Act must cease to be in force in this province, in so far as it would not be possible for us to collect fees or tax under an Act on a subject which is in the Federal list.

" Let me first deal with the first portion. All that section 143 (2) says is that if any tax is being collected by a Local Government on a subject which is included in List I of Schedule VII, i.e., the Federal list, that tax the province will be allowed to continue to collect even after the date when Part III comes into force, provided that the tax has been collected under a Provincial Act passed before the 1st January 1935. This tax no doubt will not come under that, because it will be collected only after 1st January 1935; but what will happen to taxes which have been imposed subsequent to that date? The section does not say that these taxes will be illegal; it does not say that we have no right to pass this law."

Mr. P. V. KRISHNAYYA CHOUDARI:—" Will you please address the Chair? "

The Hon. Sir K. V. REDDI NAYUDU:—" I thought the hon. Member would sometimes expect to hear me. I do not now address any individual; the hon. Member is mistaken in thinking that I am not addressing the House; I am addressing the House through the President."

Mr. P. V. KRISHNAYYA CHOUDARI:—" On a matter of personal explanation, Sir? "

* The Hon. the PRESIDENT:—" Order, order."

* The Hon. Sir K. V. REDDI NAYUDU:—" Will hon. Members please have a look at section 143? It says: I shall omit the words which are not necessary, Mr. President:

' Any taxes which were being lawfully levied by a Provincial Government under a law in force on the first day of January 1935, may, notwithstanding that those taxes are mentioned in the Federal list, continue to be levied and to be applied to the same purpose until provision to the contrary is made by the Federal Legislature.'

That is to say, if there are taxes that are already being collected on that date, the province will be allowed to continue to collect those

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taxes, unless the Federal Government intervenes and says: 'No, you shall no longer collect them; we shall collect them ourselves.' It does not say that the Acts passed after that date are illegal or that we cannot collect the amounts mentioned therein. My friend Sir Patro has put an absolutely wrong construction on the section. It does not take away the right of this Council to pass such laws as it pleases for the collection of taxes or fees or whatever you may call them. There is absolutely no doubt about that.

"Now, Sir, there is something to be said as regards the other question. My hon. Friend asked, though not expressly—I take him to have stated it to this effect—what is the good of passing this Act, if after Part III comes into operation, the Central Government or the Federal Government will step in and say: 'Well, Sir, this is in List I; it is no longer a Provincial Subject; section 143 does not protect you; therefore we will collect the fees ourselves or pass our own laws on the matter.' That is perfectly true.

"Bnt, Sir, my contention is that the subject matter of this Bill is not in List I, but it is in List II. Hon. Members will remember that Schedule VII gives three lists; one is a Federal List, on the subjects contained in which only the Federal Legislature is competent to legislate and on which the executive Government of the Federation alone will act. List II is the Provincial List over which we have jurisdiction here in the autonomous provinces. List III contains subjects of concurrent jurisdiction, and we need not worry ourselves with it now.

"Now, turning to Lists I and II, my hon. Friend referred to item 45 of List I. Item 45 refers to 'duties of excise'—mark you, not all taxes, not all cesses as are found in section 143 which refers to taxes, duties, cesses, or fees of any kind; they may be excise duties, they may be customs duties, they may be licence fees and so on. This item 45 speaks only of 'duties of excise on tobacco.' Now, Sir, the question that arises is whether what we are now levying is excise duty or not. The argument of my hon. Friend will be valid if it is construed that it is excise. On the other hand, look at item 48 of List II of the same schedule, namely: 'taxes on sale of goods.' The question therefore arises whether this is 'excise' or 'tax on sale of goods.' My submission to the House is that it is a tax on sale of goods. Any one who has read the Bill will clearly see that what is being taxed is the right to sell and not excise. What is the difference between the two? My hon. Friend read something from the old Act. He says that sales for export are included in excise. (Rao Bahadur Sir A. P. Patro: 'No.') I will read it. 'Excise,' it says, is 'control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.' Let us assume that that is so. That is excise of a particular kind for the purposes of that Act. But the definition of

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'excise' is entirely different when it is viewed in a general light and it is the general light that guides this section. Now, what is 'excise'? 'Excise' is a tax on goods and it depends upon the quantity of the goods allowed to be sold. Take the case of 'excise' in any other country you like. Excise is not a tax on the right to sell. Hon. Members will mark the difference between the two. One is a tax on the goods, which is not the case here. Here, what we are taxing is the right to sell. Now, Sir, if this distinction is correct, namely, that by 'excise' is meant a tax on the goods, that a man who sells ten pounds will have to pay so much and a man who sells 100 pounds will have to pay so much on the goods. Whereas, in the present Bill we have made provision only for the right to sell.

"Now, Sir, that this construction is correct is borne out by two circumstances. Here is an Act in my hand, the Bengal Act of 1935 which was passed in the month of May 1935 in the Bengal Legislative Council by the Bengal Government. Is it suggested for a moment that that this question was not considered by the Bengal Government or the Bengal Legislative Council? (Sir A. P. Patro: 'They have not seen through it.') Only one hon. Gentleman of this Council can see through it? If so, he can lay the flattering unction to his soul. (Mr. Basheer Ahmed Sayeed: 'When was that Act passed?') It was in May 1935, that is, after 1st January 1935.

"The other point that I wish to mention in this connexion is that both in the case of the Bengal Act and in regard to this Bill, the sanction of the Government of India has been obtained. Now, what does that sanction mean? If this is really a Federal subject and if section 143 could be applied to a case like this, can we honestly expect that the Government of India would have given their sanction to this Bill? (Sir A. P. Patro: 'That is a mistake.')

"Well, Sir, there are other provisions in the Act, to which I need hardly refer. There is yet another distinction which I wish to make. My hon. Friend was relying on Article 16 of Schedule I of Part II of the present Act. That is a list of provincial subjects in the Montagu Act. Hon. Members will realize that what is treated as 'excise' there is the control of sale, that is to say, control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor, etc. It is control of sale and not the sale itself. That is rather a nice technical subtlety, I admit. But in this Bill we are not controlling sales. Control of sale means, we can fix prices. That is not to be found in this Bill. Hon. Members will therefore realize that that distinction does not help my hon. Friend in the least. I therefore submit that it is really a misconception and a misunderstanding which I am sure the hon. Member will realize when he reads the section over again."

* The Hon. the PRESIDENT:—"The Chair has to decide only one point, whether the House is competent to pass a Bill like this and whether it will be valid. As the hon. the Mover of the point of order

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himself has stated, under the existing Government of India Act the House is competent to deal with the Bill. This House exists under the provisions of the existing Government of India Act (Act of 1919); the Standing Orders and Rules made thereunder are being observed and they control the procedure of this legislature now. The new Government of India Act, 1935, has not yet come into operation. If this Bill becomes an Act, whether it will be operative after the 1935 Act comes into force, is not for us to decide. Until then, this Bill, if it becomes law, will be valid, and I think the House is quite competent to pass it.

“As regards the custodianship of the rights and privileges of the House which the hon. Member, Sir A. P. Patro, has referred to, I can only say that the Chair has no power to prevent any legislation of this type which the House is competent to enact.

“As regards the wasting of time which the hon. Member has referred to, I need not make any observation, because it is entirely within the competence of the House as a whole and of individual members not to waste the time of the House but to transact the business as quickly as possible.

“It is therefore my ruling that nothing prevents this House from proceeding with this Bill.

“The motion before the House is that Bill No. 17 of 1935 be referred to a Select Committee and that under Standing Order No. 39 (2) the number of members of the Select Committee should be limited to seventeen and that the Select Committee should consist of the following members:—

- (1) The Hon. the Raja of Bobbili.
- (2) Sir William Wright.
- (3) Diwan Bahadur T. A. Ramalingam Chettiyar.
- (4) Mr. P. Peddi Raju.
- (5) Mr. K. P. Raman Menon.
- (6) Mr. P. V. Krishnayya Choudari.
- (7) Mr. C. Ramalinga Reddi.
- (8) Mr. B. Pocker Sahib.
- (9) Rao Sahib N. Siva Raj.
- (10) Mr. Mahboob Ali Baig.
- (11) Mr. Daniel Thomas.
- (12) Mr. M. S. Sreshta.
- (13) Mr. H. R. Uzielli.
- (14) Mr. A. Harischandrudu.
- (15) Mr. V. T. Arasu.
- (16) The Raja of Khallikote.
- (17) The Mover (the Hon. Mr. C. A. Souter).

Rao Bahadur Sir A. P. PATRO:—“Sir, your ruling shall prevail.”

* The Hon. the PRESIDENT:—“May I just remind the hon. Member that we have got only two minutes before us as we have to take up the adjournment motion at 4 o'clock.”

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Rao Bahadur Sir A. P. PATRO:—"Sir, if I begin now, I hope I shall have a right to continue my speech to-morrow."

* The Hon. the PRESIDENT:—"Even otherwise, the hon. Member will not be prevented from speaking to-morrow."

* Rao Bahadur Sir A. P. PATRO:—"Sir, in this case, the hon. the Mover rests his case upon the financial condition of the province and also the Hon. the Finance Member with his characteristic brevity and earnestness has placed before us a gloomy picture of the future prospects of this province in respect of its finance. I may say I do not agree with either of them that the finances of our province are such that we have to go out and find new sources of revenue. Sir, deficits there will be and that is not a new phenomena. We were in a flourishing state and got three crores by way of the release of the provincial contribution.

4 p.m. "That was the position. It seems to me that this is a question of history repeating itself. The Government have brought in this Bill with a view to raise fresh revenues."

IV.—ADJOURNMENT MOTION *RE* IMPRISONMENT FOR NON-PAYMENT OF LAND REVENUE IN SOUTH KANARA—*cont.*

The discussion of the motion for the adjournment of the business of the House was then taken up.

* Mr. U. C. SUBRAHMANYA BHATT:—"Mr. President, Sir, under Standing Order No. 19, I beg to move that the business of the House be adjourned for the purpose of discussing a definite matter of urgent public importance, namely, the recent action of the Government in arresting and imprisoning respectable mirasdars of South Kanara district for non-payment of land revenue which has caused widespread panic and resentment in the district.

"My idea in bringing up this motion is to censure the Revenue officials and the Government who have, shutting their eyes to the condition of the people in the district, put in process these repressive measures of arrest and imprisonment of respectable pattadars. I want to censure their action in arresting respectable persons and holding them up for ransom which is virtually what they are doing and what they intend to do. Even in the worst days of the Civil Disobedience Movement when taxes were withheld for political reasons, these measures of arrest and imprisonment were not resorted to by the Government. I have not come across any instance within the whole Presidency where these provisions were invoked by Revenue authorities in the collection of land revenue till now. It is due to the economic reasons especially in that part of the district, the sub-taluka of Hosdrug that the pattadars have not been able to pay the tax, in addition to the world-wide depression and to the special causes which are prevailing all over India owing to the unfortunate adverse ratio and the linking of the rupee with the sovereign. In